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## Antiquarianism and legal history

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### Introduction

Referring to the genres of writing which make up the title of this chapter, W. K. Ferguson (in his 1948 monograph *The Renaissance in Historical Thought*) irreverently avowed ‘what is mirrored in the writings we have studied, though often seen darkly as in a glass’, almost as though there was no (other) reality but the reflection itself. This wistful comment was, of course, an intellectual provocation. Ferguson’s real point was to emphasise what he saw as a precept of history and historical writing: that the past is made up of events; events which are capable of being given meaning and construction by their observers in an active sense.<sup>1</sup> His line of reasoning was that, while accepting the limitations of individual bias, and the influences of scholarly tradition, it is still incumbent upon the historian to give some meaning to recorded phenomena. Ferguson held that to interpret the past adequately, one must consciously attempt to recognise one’s own perspective, and how that viewpoint relates to its intellectual heritage.<sup>2</sup> With just such a frame of reference, the aim of this

1 See W. K. Ferguson, *The Renaissance in Historical Thought: Five Centuries of Interpretation* (Cambridge, MA, Riverside, 1948), pp. 386–7, quote at p. 386 – itself (of course) a dull reflection of St Paul (I Corinthians, 13). Ferguson has elsewhere noted:

The interrelation of these various forms of historical activity may be difficult to establish with certainty; but the scholar who ignores the possibility of a causal relation between them and the subject of his own special interest, or who is content to recount *what* occurred without venturing to suggest *why* it may have occurred, is, I think, using the concept of scientific objectivity as a pretext for avoiding the necessity of thought.

W. K. Ferguson, ‘The Interpretation of the Renaissance: Suggestions for a Synthesis’ in P. O. Kristeller and P. P. Wiener (eds.), *Renaissance Essays* (New York, Harper, 1968), p. 62. See also L. Kramer, ‘Intellectual History and Reality: The Search for Connections’, *Historical Reflections*, 13 (1986) 517–545 at 519–521. Cf. E. K. Rand, ‘Mediaeval Gloom and Mediaeval Uniformity’, *Speculum*, 1 (1926) 253–68 at 262–3.

2 See Ferguson, *Renaissance in Historical Thought*, p. 388.

chapter is to explore how far the necessity for this kind of active and contemplative self-consciousness is amplified when the task at hand involves not only the interpretation of historical events but also the interpretation of a threshold for the writing of legal history itself.

With respect to the emergence of history as a discipline in the sixteenth and seventeenth centuries, Piggott has noted:

In studying the origins and development of historical disciplines, we are in effect engaged in the investigation of the history of ideas; ideas about the past held by those who are now the objects of our own historical investigation, and the techniques they devised, deliberately or accidentally, to obtain and interpret the basic material from which history can be written. The sixteenth and seventeenth centuries constitute a formative period in the development of such ideas in Britain, and we can see at that time the construction of disciplines to organise and investigate more than one type of historical source-material.<sup>3</sup>

More specifically, Sir John Baker has particularly identified the importance of the Elizabethan Society of Antiquaries as an instance of historico-legal genesis:

We are told that the Renaissance gave man an awareness of his past, and if ever the history of English legal history comes to be written the story will begin in the first Elizabethan age – the age of William Lambard, John Dodderidge, Francis Tate and Roger Owen. But those first legal antiquaries were preoccupied with dark and distant problems about the origins of the common law and its Englishness.<sup>4</sup>

This chapter, accordingly, aims to investigate some of the fundamental historiographical and methodological issues raised by the emergence of legal history as a branch of learning in the sixteenth and seventeenth centuries. In the first section, it examines the field of English Antiquarianism and its connections with embryonic historical genres and with the legal profession. From this point the chapter explores the relationship of legal and historical studies, and the hybrid discipline of legal history. The final section turns to a consideration of prosopographical methodology as an example of a specific technique that may, in the

3 S. Piggott, 'Antiquarian Thought In The Sixteenth And Seventeenth Centuries' in L. Fox (ed.), *English Historical Scholarship in Sixteenth and Seventeenth Centuries* (London, Oxford University Press, 1956), p. 93. See also B. C. Southgate, "'No Other Wisdom'? Humanist Reactions To Science And Scientism In The Seventeenth Century', *The Seventeenth Century*, 5 (1990), 71–92.

4 J. H. Baker, 'The Dark Age Of English Legal History, 1500–1700', in his *The Legal Profession And The Common Law* (London, Hambledon, 1986), p. 435.

appropriate circumstances, be usefully employed in the study of legal history.

### English antiquarianism

In the late sixteenth and early seventeenth centuries, the term ‘historian’ had not yet reached the degree of established definition by which we understand the term today. The members of the Elizabethan Society of Antiquaries certainly did not refer to themselves as historians: they referred to themselves as ‘antiquaries’.<sup>5</sup> Perhaps only a couple of the group’s members were what we would describe today as ‘historians’. Who were these self-proclaimed antiquaries? In one sense the antiquaries were earnest amateurs and dilettantes. They were all male, and they were almost exclusively members of the ‘gentry’. Some were based in London and others oscillated between town and country, in a manner as habitual to the gentry of the time as it is for their counterparts even today. They were wealthy and successful enough to have the time to spare for conducting research on topics of interest to their association, and to attend conferences whilst in London during the Term. In another sense, the antiquaries were discriminating professionals. Almost all of the membership of the group was educated in the legal system, mostly (but not exclusively) at the Inns of Court, and a very large number of members made their living, at least in part, from the practice of the law.<sup>6</sup> Many of the members, especially the heralds, also had more specialised interests in archival management. The way in which the topics for their discussions were selected for investigation, and the way in which these topics were researched and presented, indicates that there was a consensus amongst the group about certain things of collective interest, and how such things could be better understood.

The antiquaries studied what they called the ‘monuments’: material items (documentary or otherwise), which they had exhumed as direct evidence about their chosen topics. In relation to the group’s documentary investigations, perhaps the most interesting and important of the methodological propensities of the Elizabethan Society of Antiquaries, in terms of engendering hypothesis and comment, was etymology. In

5 W. Camden, ‘Ad Lectorem’, *Britannia*, 5th edn (London, 1600), p. 30; Sir H. Spelman, ‘The Occasion’, Bodley MS e Mus 107, fols. 1–2. See D. R. Woolf, ‘Erudition and the Idea of History in Renaissance England’, *Renaissance Quarterly*, 40 (1987), 11–48 at 17–27.

6 M. Stuckey, “... this Society tendeth...”: Elite Prosopography in Elizabethan Legal History’, *Prosopon*, 1 (2006), 1–58, Table 2. Candidates for Membership: Careers, pp. 31–5.

countless instances throughout their 'discourses' (the remnants of the Society's documentary records), an etymological approach is in evidence.<sup>7</sup> Etymology, for the antiquaries, was an important means of accessing the past; it was a method, an agreed technique, towards that end.<sup>8</sup> Etymology additionally had the authority and propriety of being a mode of analysis with a distinguished and cosmopolitan descent of classical and scholastic heritage. It was also an approach consonant with accepted practices of common law learning.

In many other ways, the antiquaries were out of step with purely 'historical' developments in the writing of history. One of the important themes of contemporary historical thought received from classical sources was that of the cycle. For centuries up until the late fifteen hundreds, English 'historians' had recorded the great deeds of their nation in *Chronicles*, which drew heavily upon recurrent motifs.<sup>9</sup> There is no evidence of attempts by the antiquaries to adopt the chronicler's approach. Perhaps of greater importance, however, was a newer style, or perhaps it might be more accurate to say 'fashion', of historical writing, a style which Smuts terms 'analytic' but which is probably better expressed as 'politic'. Many active intellectuals of the time, especially some of the connections of great magnates such as the Earl of Essex, drew on their thespian experiences at the Inns of Court to produce works (including but not limited to historical works), which criticised a perceived decadence within the Stuart Court.<sup>10</sup> The 'historical' works of this period were often studies of

7 Brooks and Sharpe comment:

In the 1590s, William Camden introduced the members of the Society to Europe, especially those of France with whom he had entered into correspondence. Camden spoke directly of 'a consonancy and a correspondency between the name of a thing and the thing named'. In light of Camden's example, most members of the Society employed etymological analysis in their discourses on the history of English institutions and offices.

C. Brooks and K. Sharpe, 'Debate; History, English Law And The Renaissance', *Past And Present*, 72 (1976), 133–42 at 138.

8 The group's etymological proclivities have been reiterated, more recently, by G. Parry in *The Trophies of Time: English Antiquarians of the Seventeenth Century* (Oxford University Press, 1995), pp. 29–31.

9 D. R. Woolf, 'Genre into Artifact: The Decline of the English Chronicle in the Sixteenth Century', *The Sixteenth Century Journal*, 19 (1988), 321–54.

10 P. Raffield, *Images and Cultures of Law in Early Modern England: Justice and Political Power, 1558–1660* (Cambridge University Press, 2004), pp. 124–56; I. Kamps, *Historiography and Ideology in Stuart Drama* (Cambridge University Press, 1996), pp. 26–46 and F. J. Levy, 'Hayward, Daniel, and the Beginnings of Politic History in England', *Huntington Library Quarterly*, 50 (1987), 1–34.

political upheaval. They also contained an underlying message about how such discord might be quelled by a wise and just ruler, a ruler who could, through prudence and practicality, eliminate threats to the proper functioning of institutions. Smuts's exemplar 'historian' is, not surprisingly, Bacon.<sup>11</sup> The members of the Society of Antiquaries could not, as a group, realistically be portrayed as historians of this kind. The historical work of the Society was not so politically inspired or pragmatic as, for example, Bacon's or Hayward's.<sup>12</sup> The Society's work was certainly instructive, but it was also to a certain extent detached and legalistic.<sup>13</sup> What is more, its audience was more private and restricted. In this sense, and for these reasons, Pocock's claim, that the material which early seventeenth-century Englishmen used in their interpretation of the common law was absent of any basis of comparison, is overly conservative: the antiquaries (at least) were genuinely figures of at least some note, whose respected opinions were of some value. However, it would equally be an exaggeration to say, with Sharpe, that in the Society of Antiquaries we can find revealed much of any precise contemporary political relevance, or that the opinions of the antiquaries necessarily carried much or any great political 'weight'.<sup>14</sup> If anything, comparatively recent changes in the genres of historical writing had had the effect of distancing commentary from an eventful context, a trend that was, eventually, to mature into criticism and debate.<sup>15</sup> The Elizabethan Society of Antiquaries collectively essayed a style of historical writing, redolent of the forensic qualifications of the majority of its members, in which we can find epitomised (for both better and worse) many of the conventions of legal history in the twentieth and twenty-first centuries.

### Law and history

As disciplines of knowledge and scholarship law and history have now, those in the sixteenth-century had certain methodological similarities.

11 R. M. Smuts, *Court Culture And The Origins Of A Royalist Tradition In Early Stuart England* (Philadelphia, University of Pennsylvania Press, 1987), pp. 76, 79, 259–61.

12 Levy, 'Beginnings of Politic History'.

13 M. Stuckey, 'Property Law and Politics in the *Discourses* of the Elizabethan Antiquaries', *JLH*, 24 (2003), 237–49.

14 J. G. A. Pocock, *The Ancient Constitution And The Feudal Law*, 2nd edn (Cambridge University Press, 1987), chapter 3, and K. Sharpe, *Sir Robert Cotton, 1586–1631: History and Politics in Early Modern England* (Oxford University Press, 1979), p. 23. See also Kamps, *Historiography*, p. 47 ff.

15 Woolf, 'Genre into Artifact'.

Foremost among these is the notion that the results of study, ‘conclusions’ or ‘decisions’, must be based upon ‘evidence’. Both history and law, operating in the field of human activity, seek to represent authentic phenomena, and human elements of interpretation are required to be, to a degree at least, consciously subjected to ‘rules of evidence’. Even accepting that those rules (in the restricted, lawyers’ sense) were quite different (and certainly much less complex and extensive) in the sixteenth century than they are in modern English law, both disciplines can be characterised by this methodological attribute. In this sense, these two disciplines owe much to their antecedent ‘diplomatic’, especially in so far as that proto-discipline trained its neophytes in the study and exegesis of documents.<sup>16</sup> With this much in common between legal and historical methodologies, it is a paradox that the hybrid specialty of legal history, despite appearances, accords exceedingly little significance to historically critical analysis.<sup>17</sup> Kiralfy proposed that the root of this paradox might itself be historically revealed, in the constitutional crisis of the seventeenth century.<sup>18</sup> The result, for Kiralfy, was that English lawyers have, since the triumph of parliament, invested their efforts in the political system and process, rather than in theoretical

16 H. White, ‘The Politics of Historical Interpretation: Discipline and De-Sublimation’, *Critical Inquiry*, 9 (1982), 113–137 at 120–3; D. R. Kelley, ‘Clio and the Lawyers: Forms of Historical Consciousness in Medieval Jurisprudence’, *Medievalia et Humanistica*, new ser. 5 (1974), 25–49 at 25–26 and D. R. Kelley, ‘*Historia Integra*: Francois Baudouin’s Conception of History’, *Journal of the History of Ideas*, 25 (1964), 35–57 at 54–7. See also P. Chaplais, *Diplomatic Documents Preserved in the Public Record Office* (London, HMSO, 1964); P. Chaplais, *English Royal Documents: King John–Henry VI, 1199–1461* (Oxford, Clarendon Press, 1971); P. Chaplais, *Essays in Medieval Diplomacy and Administration* (London, Hambledon, 1981) and P. Chaplais, *English Medieval Diplomatic Practice* (London, HMSO, 1975–82).

17 This paradox may be a peculiarly English enigma, as Kiralfy has noted:

The attitude of the English Lawyer towards his law as an institution independent of the machinery of its creation is ambiguous. The fundamental principles of English Law are not indigenous, but transplanted from the European continent in the eleventh century, and not of great antiquity. They have since developed on the basis of custom, practice, and ideas of what is right and reasonable. Hence one would expect the English Lawyer to be drawn to ideas of natural law and morals, and be a supporter of the historical and metaphysical schools of jurisprudence. However the opposite appears, at least superficially, to be the case where law is studied in England in abstract terms. All the emphasis is laid on authority and legality, on positive approaches.

A. Kiralfy, ‘Law and Right In English Legal History’ in L. S. Olschki (ed.), *La Formazione Storica Del Diritto Moderno In Europa (Atti Del Terzo Congresso Internazionale Della Società Italiana Di Storia Del Diritto)* (Florence, 1978), pp. 1069–86 at p. 1069. (This article was republished, under the same title, in the *JLH*, 6 (1985), 49–61.)

18 *Ibid.*, pp. 1069 and 1084.

concepts and principles. The Elizabethan Society of Antiquaries stood at the point immediately antecedent to this critical moment. It was precisely the Society's potential of realising itself as a 'historical school of jurisprudence' which was to become an impairment in the heated vessel of Stuart politics.<sup>19</sup>

There is another, and earlier, historical reason for the common law's rejection of history. Tangible advances in the physical sciences during the sixteenth and seventeenth centuries provided a paradigm for the successful production and management of knowledge. Amongst others, Shapiro has outlined, under the rubric 'The Diffusion of Scientific Knowledge', the utilisation of the new scientific methodology in other fields of study, particularly in the human and social fields of study.<sup>20</sup> English lawyers were no less keen than philosophers and political thinkers to adopt the 'positive' method which had proven so effective a tool for investigation. In many ways, the lawyers had a special enthusiasm for an approach which centred upon systematised method. The pragmatic technique of English law thus (apparently) eschewed the historical, 'natural law', approach as impractical and speculative: with the result that the courts were inherently limited in their scope to employ the 'dangerous abstract notions'<sup>21</sup> implicit in such an approach. This reasoning accords with Rodgers's assessment that by the early seventeenth century the common law attitude towards history was dominated by a 'custom theory' which held, as an 'article of faith', that the law was a body of 'immemorial

19 For the more theory-based approach of the period prior to the conflict, see J. H. Baker, 'English Law And The Renaissance', *CLJ*, 44 (1985), 46–61 at 51–3.

20 B. Shapiro, 'Law And Science In Seventeenth Century England', *Stanford Law Review*, 21 (1969), 712 at 732–6. Her archetype is, of course, Bacon. See also D. R. Woolf, 'Disciplinary History and Historical Culture. A Critique of the History of History: The Case of Early Modern England', *Cromohs*, 2 (1997), 1–25; M. Feingold, *The Mathematicians' Apprenticeship: Science, Universities and Society in England, 1560–1640* (Cambridge University Press, 1984) and F. R. Johnson, 'Gresham College: Precursor Of The Royal Society', *The Journal Of The History Of Ideas*, 1 (1940), 413–38 especially at 413–14.

21 Kiralfy, 'Law and Right', pp. 1085–6. Contra: C. G. Haines, *The Revival of Natural Law Concepts* (Cambridge, MA, Harvard University Press, 1930), pp. 29–39 – a work redolent of American, and specifically Harvard-based, interbellum realism which indicates the omnipresence of 'natural law' influences. In a reversal of roles, Morton J. Horwitz, *Dean of Harvard Law School, in his H. L. A. Hart Lecture in Jurisprudence and Moral Philosophy* (presented at University College Oxford on 18 May 1995) presses the ideological function of the separation between law and history as one of facilitating a neutral and apolitical means for legal discourse: M. J. Horwitz, "Why is Anglo-American Jurisprudence Unhistorical?", *OJLS*, 17 (1997), 551–86, particularly at 565–8.

custom'.<sup>22</sup> As Brookes has recently shown, however, the 'custom theory' was merely one of a number of theories of law used by common lawyers in Elizabethan England and it was definitely not the solitary foundational justification advanced by its practitioners and thinkers.<sup>23</sup> It is probably with no surprise, accordingly, that we see little if any conscious construction of the common law as an 'article of faith' from the writings which we know to have been the records of the Society's transactions. The writings are nationalistic certainly, but not dogmatic. There is evidently an interest in methodical approaches, but in a juristic rather than a thoroughly analytical sense.

There is yet another way of interpreting this phenomenon, of the contemporary lack of interest in legal history (in the face of an overwhelmingly pragmatic philosophy); and that is to propose a conceptual conflation of God-given law, the law of nature, and 'positive' law. It is to say that this distinction, based upon the source of legal authority, is anachronistic to the times under examination. For its own part, this alternative interpretation assumes that the unconscious outlook was actually a 'natural law' orientation, at least in the sense that natural law was inherently 'reasonable' or 'rational'. It may explain, for example, how many traditional legal practices of local manorial custom could be quashed – as indeed during this period they were – where such practices were held to be

22 According to Rodgers:

The development of a "theory" of customary law was accompanied, between about 1550 and the beginning of the seventeenth century, by a more general toughening of insular common law attitudes and thought. The result was that by the early 1600s the belief that the common law was merely an expression of immemorial custom had become an article of faith. The development of a theory of custom was partly a symptom, and partly a cause of this process, but it may also owe something to the fact that the courts were seeking to defend themselves against the new conciliar courts, and to the Tudor centralisation of government. The peculiarly English attitude to history that resulted was certainly not consciously constructed.

C. P. Rodgers, 'Humanism, History And The Common Law', *JLH*, 6 (1985), 129–156 at 136. See *ibid.* at 141–6 for Rodgers's reasons for this insularity. See also Pocock, *Ancient Constitution*, pp 36–8.

23 C. W. Brookes, *Law, Politics and Society in Early Modern England* (Cambridge University Press, 2008), pp. 66–123 and 244ff. See also A. Musson, 'Myth, Mistake, Invention? Excavating the Foundations of the English Legal Tradition' in A. Lewis and M. Lobban, *Law and History*, Current Legal Issues, 6 (Oxford University Press, 2003), pp. 63–81, especially at p. 68ff. and pp. 75–8 showing that Coke substantiated his 'historical' observations by reference to contemporary secondary literature, and (more generally) D. Ibbetson, 'Custom in Medieval Law' in A. Perreau-Saussine and J. B. Murphy (eds.), *The Nature of Customary Law* (Cambridge University Press, 2008), pp. 151–75.



‘unreasonable’. The interpretation nonetheless entails a practice silently informed by the very ‘abstract notions’ which the so-called pragmatic approach, by definition, forswears. It therefore, ultimately, rests upon the impregnable notion of the common law as enshrined national custom. Controversially, Kelley has claimed that when Maitland said, in his famous Rede lecture,<sup>24</sup> that the sixteenth century was when English law was ‘saved but isolated’, we should really understand that this was when English historical scholarship was ‘isolated but stagnated’. For Kelly, while the French were reinterpreting and reappraising:

The English, on the other hand, clung even more tenaciously to their myths, and they continued to rest their case upon the aboriginal character and prehistorical origin of common law. The fact that between Fortescue and Coke lay over a century of exploration into European legal and institutional history, much of it by professional jurists, did not seem to matter.<sup>25</sup>

Impractical and abstract, the historical project has much to offer the study of law. As an alternative and corrective to the arid positivism of the common law approach we might look beyond England.<sup>26</sup>

### Method

Given these initial conclusions, the method employed for the study of the Elizabethan Society of Antiquaries requires some explanation. For legal history (or, indeed, historico-legal research) to avoid both the Scylla of ‘law school trimmings’ and the Charybdis of postmodern or ‘critical legal studies’ relativism requires, if it is possible, the deliberate constitution of a methodology designed to meet the needs of the subject at hand. Along with the kind of textual analysis of primary and secondary materials with which lawyers, historians and philologists generally are acquainted, the study of a group, by necessity, calls for the utilisation of a more complex, and hence a rather more disputed, method known as prosopography.

Prosopography is a term which is familiar to historians but almost unknown amongst lawyers. Prosopography consists of the analysis of the shared conditions and experiences of a group of individuals via the

24 F. W. Maitland, *English Law And The Renaissance* (Cambridge University Press, 1901).

25 D. R. Kelley, ‘History, English Law And The Renaissance’, *Past And Present*, 65 (1974), 24 at 30. Rodgers essentially agrees: Rodgers, ‘Humanism, History and the Common Law’, 141–6.

26 See Kelley, ‘*Historia Integra*’, pp. 54–7, Kelley, ‘History, English Law and The Renaissance’, 28–9 and Rodgers, ‘Humanism, History and the Common Law’, 153–4.

examination of their (collective) lives. Typically such analysis involves the delineation of the 'group' and then the uniform application of a selection of questions about factors such as social class, wealth, religion and occupation to each 'member'. The answers to such questions may then be assembled and examined for patterns, variables and affinities within the defined group. The objective of the method is to unveil otherwise concealed influences within political or social structures and organisations, influences which may not be apparent from analyses of overt political statements or institutional arrangements. The prosopographical method can be identified with two styles of historical research. The first may be termed the elitist school. Elitist prosopography typically concentrates upon the micro-politics of small but significant groups such as ruling elites. The method is apparent in the attention paid by historians to, for example, Members of Parliament as a 'group', to factors such as their marriage connections, business interests and educational backgrounds. The result is normally a series of detailed case studies of 'members', with the paradigm exemplified in the colossal and ongoing *History Of Parliament* project.<sup>27</sup> The historians of the Roman republican period have worked the method almost to the point of exhaustion, and in so doing they have also made some exceptionally valuable and critical assessments of the reliability and utility of the method and its application to 'elites'.<sup>28</sup> The second

27 Parts currently existing include: J. S. Roskell, L. Clark and C. Rawcliffe (eds.), *The History Of Parliament: The House Of Commons 1386–1481*, 4 vols. (Stroud, Sutton, 1992); S. T. Bindoff (ed.), *The History Of Parliament: The House Of Commons 1509–1558*, 3 vols. (London, Secker and Warburg, 1982); P. W. Hasler (ed.), *The History Of Parliament: The House Of Commons 1558–1603*, 3 vols. (London, HMSO, 1981); B. D. Henning (ed.), *The History Of Parliament: The House Of Commons 1660–1690*, 3 vols. (London, Secker and Warburg, 1983); E. Cruikshanks, S. Handley and D. Hayton (eds.), *The History Of Parliament: The House Of Commons 1690–1715*, 5 vols. (Cambridge University Press, 2002); R. Sedgwick (ed.), *The History Of Parliament: The House Of Commons 1715–1754*, 2 vols. (London, HMSO, 1971); Sir Lewis Namier and John Brooke (eds.), *The History Of Parliament: The House Of Commons 1754–1790*, 3 vols. (London, HMSO, 1964); and R. G. Thorne (ed.), *The History Of Parliament: The House Of Commons 1790–1820*, 5 vols. (London, Secker and Warburg, 1986).

28 Some of the most significant examples of Roman republican elite prosopography in application include: M. Gelzer, *The Roman Nobility*, English trans. (Oxford, Blackwell, 1969) (originally published in 1912); E. Badian, *Foreign Clientelae 264–70 BC* (Oxford, Clarendon Press, 1958); and E. S. Gruen, *The Last Generation Of The Roman Republic* (Berkeley, University of California Press, 1974). See also for further discussion of the method in this context T. R. S. Broughton, 'Senate and Senators of the Roman Republic: The Prosopographical Approach', *Aufstieg und Niedergang der Romischen Welt*, 1.1 (1972), 250–65 and C. and O. Wikander, 'Republican Prosopography: Some Reconsiderations', *Opuscula Romana*, 12 (1979), 1–12.

genre of prosopography may be termed the mass school. This approach typically focuses upon a much wider 'group' than the elitist school, and tends to be more consciously sociological and statistical in its analysis of broad social phenomena.<sup>29</sup>

The attraction of prosopography is conspicuous: the method explicitly shifts the analytical emphasis, from the recurrently desolate interpretation of the famous acts of 'great men' and the ideal operations of institutional models, to another level of human and social action. It offers a perspective that can be broader and more profound than more traditional forms of history. Yet in accepting the obvious appeal of this tool, one must not overlook the serious handicaps that attend its employment. The method is dependent upon an extensive, if not comprehensive, stockpile of data concerning the members of the identified group, a prerequisite that almost never subsists. The usual starting point for the would-be prosopographer is a fact-base, which is fragmentary, lacking in detail about some members, and skewed in different directions for each subject.<sup>30</sup> This difficulty is exacerbated by ubiquitous interpretative problems associated with the appropriate categorisation and interpretation of what evidence does exist.<sup>31</sup>

Difficulties such as those referred to here have driven Carney (and many others) to despair,<sup>32</sup> but handled carefully it is possible to utilise the prosopographical method in order to uncover important connections between, and where justifiable even discern influences upon, individual actors. Stone suggests some practical guidelines to the successful employment of the method: the 'group' under consideration must be relatively small and well defined, the recoverable evidence must be reasonably detailed and reliable, and the examination can be pointed to the resolution of a specific

29 See L. Stone, 'Prosopography', *Daedalus*, 100 (1971), 46–79, *passim*.

30 See C. Nicolet, 'Prosopographie et histoire sociale: Rome et l'Italie à l'époque républicaine', *Annales: économies, sociétés, civilisations*, 5 (1970), 1209–28 at 1226: 'Il s'agira donc, dès le départ, de bien mesurer le degré d'incertitude que comporte nécessairement toute enquête prosopographique, et d'abord d'évaluer le rapport entre les individus connus et étudiés et le nombre total de membres du groupe envisagé, tel qu'on peut l'établir.'

31 See Stone, 'Prosopography', 57–65.

32 'The imponderables, even with contemporary levels of evidence, involve such subjectivity as to make any findings questionable . . . The activists, for example, might be merely the "leg men" for power figures who dominated the action without ostensibly participating in the decision making at all.' T. F. Carney, 'Prosopography: Payoffs And Pitfalls', *Phoenix*, 27 (1973), 156–79 at 170–1. The imponderables, while recognised, do not often deter: see R. V. F. Heuston, 'Judicial Prosopography', *LQR*, 102 (1986), 90–113.

issue.<sup>33</sup> At a broad level, the application of the prosopographical method to legal history is justified by the fact that, inherently, lawyers have always been assiduous record keepers. In recent years, Ives, Clendenin, Prest and Lemmings have successfully applied this type of analysis to the reasonably confined topic of the history of the English legal profession.<sup>34</sup> This study focuses more sharply upon the legal experiences of a group whose connection with the law has, it is contended, been underestimated. Does the specific study of the significance of legal influences upon the Elizabethan Society of Antiquaries satisfy Stone's other prerequisites? The size of the group is quite small indeed, with apparently not more than 106 possible members, and amongst whom a sizeable proportion is fairly well known as historical actors. The recoverable evidence is considerable in quantity and also quite detailed in nature, and what exists can be tested for its reliability. It would appear that, experimentally at least, the prosopographical method should offer some important insights to the resolution of the subject at hand.<sup>35</sup>

Before passing from this question, it ought to be noted that Stone's criteria are squarely and expressly aimed towards what was earlier described as 'elite' prosopography. Although the present subject does not directly raise the question of 'mass' prosopography, there are nonetheless some interesting general observations that should be made in relation to mass prosopography and legal history. Small groups, by definition, exist within

33 Stone, 'Prosopography', 69. For a similarly optimistic attitude, albeit less detailed on the methodological issues, see J. E. Neale, 'The Biographical Approach To History', *Essays In Elizabethan History* (London, Cape, 1958), 225–37 and Baker, 'English Law And The Renaissance', 49–50. An example of its employment: L. Stone, 'The Educational Revolution In England, 1560–1640', *Past and Present*, 28 (1954), 41–80.

34 E. W. Ives, 'Some Aspects of The Legal Profession in the Late Fifteenth And Early Sixteenth Centuries', unpublished Ph.D. thesis, University of London (1955); E. W. Ives, *The Common Lawyers Of Pre-Reformation England* (Cambridge University Press, 1983); T. B. Clendenin, 'The Common Lawyers In Parliament And Society: A Social And Political Study Of The Common Lawyers In The First Jacobean Parliament', unpublished Ph.D. thesis, University of North Carolina (1975), pp. 4–10; W. R. Prest, *The Inns of Court under Elizabeth I and the Early Stuarts: 1590–1640* (London, Longman, 1972), especially at p. 221; W. Prest, *The Rise Of The Barristers: A Social History Of The English Bar 1590–1640* (Oxford, Clarendon Press, 1986); and D. Lemmings, *Gentlemen And Barristers: The Inns Of Court And The English Bar 1680–1730* (Oxford, Clarendon Press, 1990). The method has also been utilised, in relation to the contemporary scientific community: Feingold, *Mathematician's Apprentice*, especially pp. 122–65 and 190–213.

35 Stuckey, 'Elite Prosopography', and M. Stuckey, "'Enjoyed by the Laws of this Assembly": The Elizabethan Society of Antiquaries and the Prosopographical Approach', in K. S. B. Keats-Rohan (ed.), *Prosopography Approaches and Applications: A Handbook, Prosopographica Et Genealogica*, 13 (2007), pp. 499–525.

the context of larger ones. Mass prosopography, as we have noticed, draws heavily upon statistical and sociological methodologies. The sociological analysis of law is most closely associated with pioneering scholars of the legal realist school and the ongoing research of the socio-legal movement. At its limit, claiming that there are no such things as legal rules, and that what is (analytically) mistaken for 'rules' is simply the politics, economic interests and personal biases of individual judges (as expressed through cases by careful choice of precedents), legal realism and socio-legal theory present a very different understanding of the legal system and its constitution. The approach may be extrapolated, in the study of legal history, to a consideration of such factors upon any legal actors (be they judges, legislators, bureaucrats or writers). American legal history has been greatly influenced by American legal realism and socio-legal approaches. The value of the sociological approach, even to the study of specifically targeted 'elites', is in the provision of contextual data, of 'facts', capable of situating the chosen group within a historical and social environment.<sup>36</sup>

### The Elizabethan Society of Antiquaries

As a 'group', however we choose to define or use that term, the Elizabethan Society of Antiquaries has attracted relatively little attention from historical scholars interested in the period. Even less interest has been demonstrated by legal scholars. It is actually surprising that the coalescence of so many important figures has generated only a few direct studies and *excursi*. Yet the society has never entirely lost its attraction to researchers. Lineages of interest can be traced back to the seventeenth century itself, and twentieth-century scholarship has, in its own way, rediscovered the rediscoverers. The history of the transmission of knowledge about the society reveals many of the interesting questions of interpretation that are of direct relevance.

#### *The primary sources, and other contemporary treatments*

A large number of papers generated by the society survive, almost all of which are available in a few major English research libraries. The most important of these are Spelman's 'The Occasion of this Discourse'<sup>37</sup> and

<sup>36</sup> See R. K. Merton, 'Science, Technology and Society in Seventeenth Century England', *Osiris*, 4 (1938), 360–632, especially at 367–72.

<sup>37</sup> See n. 5 above.

the so-called Cotton Petition,<sup>38</sup> both of which reveal significant intrinsic information about the organisation, membership and purpose of the society. The 'Cotton Petition' is a request from three named group members, addressed to Queen Elizabeth I, for the formal recognition and establishment of the society. It details the objectives of the group, and sets out a proposed organisational structure. It is unknown whether or not the petition was ever presented to Elizabeth. If it was, its prayers were certainly not answered. The existence and significance of the petition has been noticed by numerous writers concerned with the society, and it was the subject of especially renewed interest in the twentieth century.<sup>39</sup> However, not until comparatively recently has its significance been fully appreciated. The remaining primary evidence for the existence of the society can be conveniently divided into five categories: letters between members; registers of members; notices of meetings; the written rescensions of oral reports delivered at meetings; and references in the published works of members. These categories can be dealt with in turn.

The society was apparently the topic of two letters between members. One of these letters, from Richard Carew to Sir Robert Cotton, still survives in autograph.<sup>40</sup> The other letter, whose original manuscript is now lost, is paraphrased in Latin by Thomas Smith, and Richard Gough quotes its full English text. This second letter concerns the membership of the clergyman Lancelot Andrewes.<sup>41</sup>

There are two manuscript lists of members of the Society of Antiquaries. One of these, now kept in the Norfolk Record Office, is in Henry Spelman's own hand.<sup>42</sup> The other is prefixed by the rubric 'The names of all those which were somoned at this tyme', and is signed, 'per me, Ch. Lailand'.<sup>43</sup>

Together with Lailand's list (within the same manuscript cluster) there are also two surviving manuscript notices to attend meetings. One of

38 London, British Library, Cotton MSS *Faustina* E.V. 12, fols. 89–90b and *Titus* B.V. 67, fol. 210.

39 A facsimile of a draft is produced in J. Evans, *A History of the Society of Antiquaries* (Oxford University Press, 1956), facing p. 16.

40 BL Cotton MS *Julius* C. III, fol. 30b.

41 R. Gough, 'Introduction', *Archaeologia*, 1 (1770), i at xv; on which see L. Van Norden, 'The Elizabethan College Of Antiquaries', unpublished Ph.D. thesis, University of California, Los Angeles (1946), pp. 165–9.

42 Norwich, Norfolk Record Office MS 7198, see Van Norden, 'Elizabethan College of Antiquaries', p. 13 n. 39.

43 Oxford, Bodleian Library, MS *Ashmole* 763. IV, 7, fol. 197a.

these, dated 1598, is addressed 'to Mr. Bowyer'. The other, dated 1599, is addressed 'to Mr. Stowe'.<sup>44</sup>

The written rescensions of oral reports delivered at meetings are collectively known as the 'discourses'. There is known to be some 196 of these short tracts recording the transactions of the society. The closest thing to a definitive edition is that of 155 'discourses' in *A Collection of Curious Discourses*, originally edited by Thomas Hearne in 1720, and expanded by Sir Joseph Ayloffe in 1771. Hearne's original anthology contained forty-seven 'discourses'. Ayloffe reprinted Hearne's entire text and added 108 further papers. An additional forty-one 'discourses' exist in manuscript form alone.<sup>45</sup> It is also quite likely that more, as yet to be identified, 'discourses' exist in other manuscripts and collections, but that these items have not currently been recognised as properly identified 'discourses'; for example, the text contained in the (British Library) *Stowe MS 415* entitled 'The Antiquity of the Lord Chancellor of England's Office Collected by Mr Tate of the Middle Temple London'.<sup>46</sup>

Lastly, there are two references to the society by its members in their other written works: one by William Camden in the fifth edition of *Britannia* (1600), where Camden states 'Ad Collegium Antiquariorum qui statis temporibus conueniunt & de rebus antiquis conferunt, quorum plerique etiam in Genealogiis sunt exercitati';<sup>47</sup> and the other by Richard Carew in his *A Survey of Cornwall* (1602), where Carew proudly declares his satisfaction with his membership of the society.<sup>48</sup>

In addition to direct primary evidence, contemporary 'secondary' evidence also exists, in the form of two further lists of members assembled by Edmund Bolton and William Burton. Both were contemporaries and friends of Sir Robert Cotton. Between 1618 and 1628 Bolton made at least ten attempts to reignite the society that resulted in a number of documents, two of which contain a list of members. Known as 'the West Manuscript', and 'the Society of Antiquaries Manuscript' (otherwise

44 These manuscripts are combined as Bodleian, MS *Ashmole* 763. IV, 5, 6; fols. 195a–196b. Note they therefore precede Lailand's register, to which the earlier (in date) is attached; that is, the latter list (of 1599) comes first, then the earlier, then Lailand's list.

45 See Van Norden, 'Elizabethan College of Antiquaries', pp. 28–33. 'Discourses' outside the Hearne/Ayloffe composite edition do not, it is worth noting, add to the list of possible candidates for membership.

46 M. Stuckey, 'A "Discourse" on the Antiquity of the Lord Chancellor's Office by Francis Tate', *Fundamina*, 7 (2001), 38–50.

47 Camden, 'Ad Lectorem', p. 30.

48 R. Carew, *A Survey of Cornwall* (London, 1602), p. 61b.

known as ‘the Oldys paper’), these lists are now lost, but they are quoted by Gough.<sup>49</sup> Another list of members, in the handwriting of William Burton, was discovered on the fly-leaf of a copy of Weever’s *Ancient Funeral Monuments* which had belonged to Burton. The discovery was reported, anonymously, in *Notes and Queries* in 1852.<sup>50</sup>

In terms of the desirable preconditions for the conduct of prosopographical analysis, the primary and other contemporary evidence for the existence of the society is solid and dependable. It forms the basis of any serious explication of the group. However, consistent with the intentions of the present chapter, as expressed from the outset, how this evidence has been understood and interpreted over the ensuing centuries is no less important.

### *Historiography*

Truly secondary accounts of the society begin with Dr Thomas Smith. Smith was the official cataloguer of the Cottonian Library, and as such he had free access to a wide range of documents. His catalogue, *Catalogus Librorum Manuscriptorum Bibliothecae Cottonianae*,<sup>51</sup> is prefaced by a biography of Cotton entitled ‘Vita D. Roberti Cottoni, Equitis Aurati & Baronetti’ which includes a short history of the society. Smith’s labours also included the transcription of many of the ‘discourses’. Although this aspect of Smith’s work was not published, his preparatory travails were utilised by Hearne as the basis of *A Collection of Curious Discourses*, which was published in 1720.<sup>52</sup> It seems that neither Smith nor Hearne knew of Spelman’s ‘The Occasion’. This was not the case with John Strype who, also in 1720, published *A Survey of the Cities of London and Westminster by John Stow brought down from the Year 1633 to the present time*. The *Survey* contained a brief history of the society – basically a rewording of Spelman’s account.

In 1736, Sir William Oldys wrote a short vignette on the Society within the preface to his edition of Raleigh’s *History of the World*. Another preface, to the first issue of *Archaeologia* (produced in 1770 as the official

49 Gough, ‘Introduction’, pp. xvi–xx.

50 See ‘Antiquaries of the Time of Queen Elizabeth’, *Notes and Queries*, 1st series, 5 (17 April 1852), 365–6. Unfortunately the names of both the finder and the editor of this number of the famous journal remain unknown.

51 (Oxford, 1696).

52 See T. Hearne, *A Collection Of Curious Discourses* (London, 1720), ‘Preface’, especially at pp. xxxvi, xxxvii, cxii and cxiii.



publication of the Society of Antiquaries of London), contained a history of the earlier Society by Richard Gough.<sup>53</sup> Gough's sources included Spelman, Bolton, Smith and Hearne. Despite some manifest errors on Gough's part,<sup>54</sup> it is Gough's account that became the chief conduit of information on the society to modern writers. In 1771, Sir Joseph Ayloffe re-edited Hearne's *Curious Discourses*, making specific references to Spelman's 'The Occasion', to Smith and to Gough. In 1789, Gough corrected and expanded his account of the society in the preface to his translation of Camden's *Britannia*, but thereafter we find nothing but a long silence disturbed only by the anonymous murmur of 1852.<sup>55</sup>

In 1909, Flugel opened the twentieth-century discussion of the Elizabethan Society of Antiquaries in his article 'Die Alteste Englische Akademie'.<sup>56</sup> As his title suggests, Flugel aimed to demonstrate the emergence of the idea of an 'Academy' in England and his candidate was the Elizabethan Society of Antiquaries. In a footnote, Flugel placed the establishment of the Society, by counting back Spelman's 'about 42 years since' from the 1614 effort to reorganise, arriving, with Gough, at 1572 as the date for establishment.<sup>57</sup> Flugel's specific aim was to stress the hitherto unnoticed importance of the Cotton petition in articulating the goals of the society.<sup>58</sup> His discovery should not, however, be overstated. Flugel asserted that the text of the petition was not known outside the narrow circle from which it sprang. His argument is based on the letter from Richard Carew to Sir Robert Cotton of 8 April 1605 in order, inter alia, to thank him for his selection as a member of the society.<sup>59</sup> Of special interest to Flugel was that section of the letter, which he quotes, as follows:

53 Gough, 'Introduction'.

54 Principally the calculation of the establishment date of the society at 1572 (at p. iii) – by assuming that Spelman's 'The Occasion' was written at the same time as the paper 'The Original'.

55 See n. 50 above.

56 E. Flugel, 'Die Alteste Englische Akademie', *Anglia*, 32 (1909), 261–8.

57 *Ibid.*, 261 n. 2. There was, at this time, some academic discussion of the origins of the 'Academy' as a concept, see also B. S. Monroe, 'An English Academy', *Modern Philology*, 8 (1910–11), 107–22; Monroe relies on Flugel (and Gough) for the 1572 establishment of the Society of Antiquaries.

58 Flugel, 'Englische Akademie', 261: 'Dieser ursprüngliche zweck der akademie -die ubrigens nie zur tatsache – geht deutlich aus einem dokumente hervor, dessen inhalt zwar schon 1770 in dem ersten bande der Archælogia (I, p. III) gegeben wurde, welches aber meines wissens noch nicht vollständig und diplomatisch genau bekannt gemacht worden ist.'

59 *Ibid.*, 263. Flugel cites his source for the letter as Ellis's *Original Letters*, Camden Society, XXIII (London 1843), pp. 98–100 not the Cotton manuscript original.

‘I hearde by my Brother, that in the late Queenes tyme it [i.e., the society] was lykeli to have received and establishment and extraordinarie favour from sundrie great personages; and me thinckes that under so learned a king this plant should rather grow to his full height, then quaille in the Springe.’<sup>60</sup> Discounting only the anonymous finding of Burton’s list in 1852, Flugel’s 1909 account reignited interest in the Society, interest that had been dormant since 1789. Flugel’s concise article therefore marks the threshold of modern interest in the society.

The first noteworthy twentieth-century work in the medium of English touching upon the society was Steeves’s *Learned Societies And English Literary Scholarship in Great Britain and the United States*. Originally Steeves’s doctoral dissertation, it was published in 1913.<sup>61</sup> Steeves refers to the society as ‘the most ancient of all English learned societies’,<sup>62</sup> and repeats the early origin thesis of Hearne, Gough and (more recently) Flugel<sup>63</sup> stating that the group was ‘founded by Matthew Parker . . . in 1572’.<sup>64</sup> Steeves complains: ‘The restricted aims of the writers who have treated the activities of the society at greater or less length have tended, therefore, to confine our impressions of its general importance.’<sup>65</sup> It must be borne in mind that Steeves’s overall focus was on literary scholarship, and thus the society, for him, forms no more than a prologue to his larger project. As such, Steeves’s initial judgement was that during the society’s early years its work was inspired by Parker’s Anglo-Saxon interests, but in later years this influence faded.<sup>66</sup> Steeves outlined the evidence for the date of foundation and, like his predecessors, counts back ‘about 42 years since’ (from the 1614 effort to reorganise), citing 1572 as the date for establishment.<sup>67</sup> As to the question of membership, he listed Hearne’s thirty-seven (members) names, and also added a few more of his own: (not surprisingly) Archbishop Parker and Archbishop Whitgift during the ‘early period’, but also John Selden (who was not born until 1584).<sup>68</sup> Steeves made some further suggestions about when certain individuals may have been members (or, at least, active members) by looking at birth dates, contending that Hearne’s thirty-seven are basically all later members and doubting that members from 1572 to 1588 are included in Hearne’s list.<sup>69</sup> Steeves’s final conclusion was that, even if one absents from consideration the earlier

60 Flugel, ‘Englische Akademie’, 264.

61 H. R. Steeves, *Learned Societies And English Literary Scholarship in Great Britain and the United States* (New York, AMS, 1913).

62 *Ibid.*, p. 5. 63 *Ibid.*, pp. 5–6. 64 *Ibid.* 65 *Ibid.*, p. 7. 66 *Ibid.*, pp. 25–6.

67 *Ibid.*, pp. 27–9. 68 *Ibid.*, pp. 29–30. 69 *Ibid.*, pp. 31–3.

period (the period of greater Anglo-Saxon scholarship), the Society of Antiquaries is a significant body. But, Steeves continued, if it is true that the evidence understates this earlier period, then the society was really a hugely significant Anglo-Saxon literary society.<sup>70</sup>

Published in 1917, Adams's *Old English Scholarship In England From 1566 To 1800* (originally her doctoral dissertation from Yale, in English literature) was, after Steeves, the second significant twentieth-century investigation in English of, inter alia, the Elizabethan Society of Antiquaries.<sup>71</sup> Adams's focus was on 'Old English', but she says that the 'Renaissance' almost destroyed scholarly learning and it was only with the 'Reformation' that scholarship was resurrected, in her view because the Reformers sought to establish a foundation for their new institutions in the customs and laws of their Anglo-Saxon or 'primitive' forebears.<sup>72</sup> Significantly, Adams also noted a letter dated 7 July 1568, from various members of the Privy Council, which authorised Archbishop Matthew Parker to procure rare books. Adams cites no manuscript reference, but quotes the text:

[authorising the Archbishop to have] special Care and Oversight, in the Conservation of such ancient Records and Monuments as were written of the State and Affairs of the Realm of England and Ireland; which were heretofore preserved and recorded, by special Appointment of Certain of her Majesties Ancestors, in divers Abbies, to be Treasurehouses to keep and leave in Memory such Occurrences, as fell in their Times. And because divers of such Writings were comen into the Hands of private Persons, and so partly remained Obscure and Unknown; They willed and required, that when the same Archbishop should send his Letters, or learned Deputies, requesting a sight of any such ancient Records, that they would . . . gently impart the same. Not meaning to withdraw them from the Owners, but for a time to peruse the same, upon Promise, or Band given of making Restitution.<sup>73</sup>

For Adams there was a clear and direct lineage, from the genesis with Parker, through the Elizabethan Society of Antiquities, into the post-civil war period of scholarship:

70 *Ibid.*, p. 35. In light of later work, these conclusions are revealed as largely incorrect.

71 E. N. Adams, *Old English Scholarship In England From 1566 To 1800*, Yale Studies In English, 55 (New Haven, Yale University Press, 1917).

72 *Ibid.*, p. 11.

73 *Ibid.*, pp. 18–19. The source may be J. Bruce (ed.), *Correspondence of Matthew Parker*, The Parker Society (Cambridge University Press, 1853), p. 327 which states that the letter is preserved as *Parker MS*, cxiv, art. 12, p. 49. See also G. Bill, 'Lambeth Palace Library', *The Library*, 5th series, 21 (1966), 192–206.

The revival of Old English might have come to an end with the death of its great sixteenth-century patron [Parker], but for the Society of Antiquaries. This Society was a natural outgrowth of Parker's enthusiasm for national monuments; it began in 1572, and continued many years as a private organisation, under the patronage of Sir Robert Cotton. In 1589 the Society petitioned Queen Elizabeth for the use of some public building as a place of meeting, and for the housing of a library. The petition discloses the object of the Society to have been the preservation of manuscripts and rare books relating to English history and antiquities, and the study of modern languages. During the troubles of the civil wars, the Society of Antiquaries temporarily lapsed, but it had already acted as a lever to raise the study of English antiquities to something like the plane of the classics, which had so long monopolized the interest of the universities.<sup>74</sup>

The notion of the society as having a long life and an evolving focus, a kind of micro-teleology, persisted. In 1938, Evans stated: 'Representative antiquarian opinion may be discovered in the papers written for Archbishop Parker's Society of Antiquaries, which met from 1572 to 1604, and again, in a brief attempt at revival, in 1614.'<sup>75</sup> In 1940, Johnson made a brief reference to the society, consistent with this trend: 'the Society of Antiquaries supposedly founded in 1572 by Archbishop Parker and dissolved by James I in 1604. Its interests were antiquarian and philological, and its aims, though allied to the scientific movement, were not identical with it.'<sup>76</sup>

The great watershed in twentieth-century scholarship concerning the Elizabethan Society of Antiquaries came in 1946 with the completion by Van Norden of her doctoral thesis entitled 'The Elizabethan College of Antiquaries'. The work, totalling over 600 pages, is an encyclopaedic and exhaustive study but remains unpublished. Van Norden's second chapter,<sup>77</sup> entitled 'Chronology', considered the crucial questions of whether we can ascribe precise dates to the formation of the society or its meetings and (therefore) whether we can say who its members could

74 Adams, *Old English Scholarship*, pp. 42–3.

75 E. Evans, 'Of the Antiquity of Parliaments in England: Some Elizabethan and Early Stuart Opinions', *History*, 23 (1938), 206–21 at 207.

76 Johnson, 'Gresham College', p. 423.

77 Van Norden, 'Elizabethan College of Antiquaries', pp. 71–118. This chapter, with some minor revision, was subsequently published as an article: L. Van Norden, 'Sir Henry Spelman on the Chronology of the Elizabethan College of Antiquaries', *Huntington Library Quarterly*, 13 (1949–50), 131–60. The following references, where appropriate, cite both the chapter and article. This article, coupled with its predecessor ('Peiresc and the English Scholars', *Huntington Library Quarterly*, 12 (1948–9) 369–89) are the only published elements of the thesis.

have been. The chapter provides a detailed analysis of ‘The Occasion of this Discourse’ by Spelman. ‘The Occasion’ was written as a preface to Spelman’s own ‘The Original of the Four Terms of the Year.’<sup>78</sup> ‘The Original’ was reduced to a manuscript after the abortive attempt to revivify the Society of Antiquaries in 1614, where the tract would have been delivered orally (although not, of course, necessarily from memory). Its preface (‘The Occasion’) is therefore ostensibly an explanation of the circumstances under which the ‘The Original of the Four Terms of the Year’ came to be written – but (much more importantly) is itself the only truly primary evidence of the Society’s chronology.

The greater part of Van Norden’s second chapter is devoted to dating accurately when ‘The Occasion’ was actually written. While Spelman dated ‘The Original’, he assigned no date to ‘The Occasion’. The question is crucial because one needs to know when to begin the twenty-year count back. Van Norden challenges the accepted position that ‘The Occasion’ can be taken to be contemporaneous with ‘The Original’, and that it is possible to simply count back forty-two years from 1614. After an exhaustive study she concludes that ‘The Occasion’ must have been completed some ten to twelve years after ‘The Original’, estimating the date at sometime between February 1626 and July 1628.<sup>79</sup> Van Norden’s contention is that if the reader takes Spelman’s sentence, ‘grew for twenty years to be discontinued’, and then from 1628 subtracts twenty years of idleness for the society, one arrives at 1608, which is one year after the latest of the extant ‘discourses’. If by his ‘twenty years’ Spelman means the time which elapsed between the end of regular meetings and his time of writing, ‘a long slumber broken only by the unrealized dream of 1614’,<sup>80</sup> then his account is corroborated by the existence of documents recording work of the society up to 1607, and the non-existence of such documents after that year. For Van Norden, the only twenty-year lapse Spelman can feasibly mean is from 1607 or 1608 until 1627 or 1628. She discounts the simple arithmetical method in favour of a detailed analysis of the context of ‘The Occasion’, and similarly suggests that: ‘[Spelman’s] statement is blurred for modern readers by his use of the past tense “grew for twenty Years” where good modern usage

78 ‘The Original’ survives in three manuscripts, only one of which is prefixed by ‘The Occasion’: Oxford, Bodleian Library MS *e Mus* 107, fols. 1–31 (‘The Occasion’ is fols. 1–2).

79 Van Norden, ‘Elizabethan College Of Antiquaries’, pp. 75–6 and Van Norden, ‘Chronology’, 136–7.

80 Van Norden, ‘Elizabethan College Of Antiquaries’, p. 112 and Van Norden, ‘Chronology’, 159.

would require the present perfect, and his use of “then” in the sense of “at – or during – that time” in a context where it could mean “after that time”. It is, on balance, a most convincing estimation.<sup>81</sup> Van Norden’s conclusion is, at face value, contrary to the statement of Carew in his letter to Cotton,<sup>82</sup> where in 1605 Carew refers to ‘so long discontinuance’. It seems reasonable to interpret this discontinuance as referring to Carew’s own attendance at meetings rather than the discontinuance of the group given that we have extant ‘discourses’ as late as 1607. The fact the letter was written from Carew’s Cornwall estate in Anthony lends credence to interpretation that the ‘discontinuance’ refers to Carew’s own absence. Van Norden concluded, therefore, that one can rely on Spelman to say that the Society of Antiquaries was established between 1584 and 1586; that it vanished between 1606 and 1608; and that some of its members (and perhaps some others) made a thwarted or unsuccessful attempt to resuscitate the group in 1614. Spelman’s statements, interpreted in this way, are supported by the extant documents of the college and by other circumstantial evidence.

Van Norden’s second chapter also considers the question of the dates of the meetings held by the society. For this, too, Van Norden relies on the work of Spelman. She tests Spelman’s ‘every Friday weekly in the term’ by reference to the dated documents of the antiquaries and concludes that almost all meetings were held during the law term, and concludes that while Friday was the most common day on which meetings were held, it by no means predominated, with a significant number of meetings having been held on every other day except Sunday.<sup>83</sup> Days of the week aside, the significance of holding meetings during the term periods points to the close association between the society and the legal community. Van Norden’s treatment, despite its only partial publication, remains the most authoritative secondary reference point regarding the society.<sup>84</sup>

Despite its rather promising title, ‘The Elizabethan Society of Antiquaries and Men of Law’, and its opening comment, ‘To my knowledge, no one since Hearne has stressed the part that the professional men of

81 *Ibid.* 82 BL Cotton MS *Julius C.* III fol. 30b.

83 Van Norden, ‘Elizabethan College Of Antiquaries’, pp. 116–17, 492–541 and 547–53.

84 See, for example, C. E. Wright, ‘The Elizabethan Society of Antiquaries and the Formation of the Cottonian Library’ in F. Wormald, F. and C. E. Wright, *The English Library Before 1700* (London, Althone, 1958), pp. 179–89. Although lately discredited, Rowse’s *The England of Elizabeth* (first published in 1950) also made reference to the society – albeit without the citation of references, but also without any appreciable mishap. A. L. Rowse, *The England of Elizabeth* (Madison, University of Wisconsin Press, 1978), pp. 40–1.

law, the common lawyers, played in [the society],<sup>85</sup> Schoeck's brief note of 1954 was clearly written without reference to either the Van Norden's doctoral thesis or her article on the society's chronology. He apologises for the utilisation of a limited number of sources, which seem to be merely Hearne, the *Dictionary of National Biography* and Steeves's *Learned Societies And English Literary Scholarship in Great Britain and the United States*. This would seemingly explain his unequivocal statement that the Society of Antiquaries began in about 1572 and disbanded in about 1604.<sup>86</sup> Schoeck's conclusion is that lawyers heavily populated the Society of Antiquaries. Notwithstanding Schoeck's brevity and lack of detailed consideration on the question of chronology (and its necessary consequence to the question of membership), his final inferences on the implication of the legal bias warrant reciting:

The dominance of the common lawyers . . . suggests that the activity of the members of the society in Anglo-Saxon, and later Anglo-Norman, language, history and literature was an outgrowth or by-product of their legal interests – or at least that these antiquarian interests were not incompatible with their education and work as lawyers, and that many of them no doubt were first inspired and continued to be sustained by the increasingly higher standards of scholarship and erudition in the law during the late sixteenth and early seventeenth centuries . . . the standards of scholarship among Renaissance lawyers were rather high, that they were among the first to be aware of comparative studies, and that the nature of their reverence for authority drove some of them farther and farther back into history.<sup>87</sup>

From all appearances, this brief note errs in its acceptance of the 1572 genesis theory, presumably through lack of thorough research. Curiously enough, Schoeck, only two years later, published an article concerned with the emergence of Anglo-Saxon and legal scholarship that cites, with reference to both Van Norden's article and her doctoral thesis, 1584–6 as the approximate dates for the establishment of the society. Nevertheless, and quite contrary to the Van Norden position, in

85 R. J. Schoeck, 'The Elizabethan Society of Antiquaries and Men of Law', *Notes and Queries*, 199 (1954), 417.

86 Schoeck, 'Men of Law', 417. In fact, Kendrick had made brief reference to the significance of the number of lawyers in the society just a few years before: T. D. Kendrick, *British Antiquity* (London, Methuen, 1950), p. 114 – alas Kendrick, *ibid.*, in stating that the society was founded 'somewhere about 1580', also demonstrates his unawareness of Van Norden's work. Kliger, in 1952, was similarly unconscious of the breakthrough: S. Kliger, *The Goths in England, A Study in 17th and 18th Century Thought* (Cambridge, MA, Harvard University Press, 1952), p. 119.

87 Schoeck, 'Men of Law', 421.

this second article Schoeck still speaks of a continuity, stretching as far back as Laurence Nowell and Archbishop Parker, which forms part of the history of the society.<sup>88</sup> Notwithstanding these inaccuracies and anomalies, Schoeck's basic assessment of the significance of the correlation between the society and the legal community is penetratingly accurate.

Fussner's *The Historical Revolution*, published in 1962, acknowledged the unpublished thesis of Van Norden.<sup>89</sup> Fussner's work aims to examine historical writing and thought in England in the period 1580–1640, and as such his scope is much wider than any of his twentieth-century precursors. Given these extensive objectives, his treatment of the Society of Antiquaries places great significance on the organisation's role in promoting historical research and furthering standards of historical scholarship. Yet in an otherwise celebratory account of the activities of the society, Fussner pauses to point out the members of the group 'showed little or no concern with historical contexts', but merely amassed facts and details. He complains that the society 'never attempted to reconstruct a past age' and 'failed to examine their methodological assumptions, and hence failed to develop an awareness of the importance of ideas of explanation'.<sup>90</sup> Such failings, if they are to be considered failings, had already been contemplated by Cheney and had been held to be compensated for by the antiquarian's unique enthusiasm precisely because 'the sultriness of

88 R. J. Schoeck, 'Early Anglo-Saxon Studies and Legal Scholarship in the Renaissance', *Studies in the Renaissance*, 5 (1958), 102–10 at 103–4. See also E. C. Pearce, 'Matthew Parker', *The Library*, 6 (1925), pp. 209–28.

89 Fussner neatly summarises Van Norden's findings:

Founded about 1586, the organisation known as the Elizabethan College of Antiquaries was comprised almost exclusively of men of substance who, by education and rank in society, belonged to the upper privileged class. With the notable exception of John Stow, all of the forty known members were gentlemen; many were knights, and two were noblemen. The study of law had attracted at one time or another all but eight of the members; about thirty had pursued studies at one or another of the Inns of Court. Twelve of the antiquaries became Members of Parliament, while one, Robert Bowyer, became a Clerk of Parliament. Four members were heralds, six were active diplomats or statesmen. No fewer than six of the members held office as record keepers. The society was essentially secular – Launcelot Andrewes and Abraham Common lawyers were in a majority; and meetings of the society were accordingly scheduled during term time.

F. S. Fussner, *The Historical Revolution; English Historical Writing and Thought 1580–1640* (London, Routledge, 1962), pp. 92–3.

90 *Ibid.*, p. 98.



professionalism had not yet descended upon the historical world.<sup>91</sup> Fussner's observation is superficially accurate, at least given his notion of 'historical', but the criticism is not strictly fair. The real question is whether the members ever intended to do or be what Fussner complains of as deficiency or failure. The criticism is unfair because it seeks to attribute a certain fundamental intentionality for the writing of 'history' to the members of the society, and then criticises the absence of the anachronism.<sup>92</sup> The more important point, which Fussner thankfully does pursue, is that for him the chief reason for such a 'failure' was that the group's concept of evidence was primarily that of lawyers. Fussner's conclusion therefore, that 'They were precedent-minded, not yet historical-minded scholars'<sup>93</sup> (even if it can be seen as superficial and perhaps teleological) describes to some reasonable degree the outlook and practice of the society.<sup>94</sup>

In 1967 Levy, in his *Tudor Historical Thought*, and in 1971 McKisack, in her *Medieval History in the Tudor Age*, made a brief mention of the

91 Cheney in fact repudiates any charge of aimlessness:

In one sense, the greatest achievement of the antiquaries was this accumulation of material for historical, linguistic, and archaeological study and the making of it available in printed texts and descriptions. But a total estimate of what these men did must mark the reason why they did it. They did not accumulate aimlessly. Although one motive was to salvage material that stood in danger of destruction, they were asking specific questions. They investigated origins: origins of institutions, and families, and places, often with an eye to the present.

And further:

Since historians were asking new questions, they could not proceed, as so many medieval historians proceeded, by repeating what somebody else had written and adding a little more. Accumulation of material led inevitably to comparison, comparison to criticism. They were conscious and proud of tapping new sources.

C. R. Cheney, 'Introduction' in Fox, *English Historical Scholarship*, pp. 7 and 8 (respectively). This monograph is a series of essays, originally papers delivered at a conference of the Dugdale Society 18–20 July 1956.

92 This is a historiographical 'mythology', and has since been comprehensively debunked: see Q. Skinner, 'Meaning and Understanding in the History of Ideas', *History and Theory*, 8 (1969), 3–53, *passim*.

93 Fussner, *Historical Revolution*, p. 99. It is worth noting that 'precedent-mindedness' was still an emerging phenomenon among common lawyers in the late sixteenth and early seventeenth centuries.

94 Fussner held to his views in *Tudor History and the Historians*: 'The Society . . . was characteristic of both the old and the new in historical scholarship. Most of the antiquaries were common lawyers, who brought with them their prejudices in favour of antiquity; they persistently antedated historical origins, but at least these men set great store by original research.' F. S. Fussner, *Tudor History and the Historians* (New York, Basic, 1970), p. 237.

society. Levy's few comments (in an otherwise detailed account) at least emphasise the connection of members of the society with the French humanists.<sup>95</sup> McKisack devoted her succinct final chapter to the Elizabethan Society of Antiquaries.<sup>96</sup> With express acknowledgement of Van Norden, McKisack's account embraces the questions of membership of the society and (if only fleetingly) the group's characteristics. In so doing, McKisack also recognised the importance of the legal quality of the association, particularly in so far as this attribute might have provided guidance or inspiration for the directions of the group's activities.

Ferguson's 1979 monograph, *Clio Unbound*, contains a chapter embracing the subject of the society.<sup>97</sup> Despite a small chronological slip, in citing 1614 as the date for the society's disbanding, Ferguson's account concentrated upon the humanist connections of the legal antiquarians and the interplay between the legal and the historical methods. More importantly, or perhaps ominously, 1979 also saw the publication of Sharpe's biography of Cotton entitled *Sir Robert Cotton, 1586–1631: History and Politics in Early Modern England*. In his examination of Cotton's importance within the English antiquarian movement, Sharpe makes many unabashed claims about the political significance of the Society of Antiquaries, but it is not until his sixth chapter that Sharpe turns self-consciously to the prosopographical method:

This information must be used with caution: we may dismiss a figure who was an important friend of Cotton because he has no other significance and hence but a small place in the records; we may dwell on those about whom there is more evidence. Friends who enjoy each other's company daily do not write letters: correspondence is the record of acquaintances or separated friends. But that which must be treated cautiously should not be disregarded . . . only from the evidence of [documented] connections will I argue a case.<sup>98</sup>

In spite of this declaration, Sharpe's is a work of truly awe-inspiring political prosopography from beginning to end. His connections at times, and his extrapolations of individuals' motives and stimuli almost always,

95 F. J. Levy, *Tudor Historical Thought* (San Marino, CA, Huntington Library Publications, 1967), pp. 164–5.

96 M. McKisack, *Medieval History in the Tudor Age* (Oxford, Clarendon Press, 1971), pp. 155–69.

97 A. B. Ferguson, *Clio Unbound: Perception of the Social and Cultural Past in Renaissance England* (Durham, NC, Duke University Press, 1979), pp. 259–311.

98 K. Sharpe, *Sir Robert Cotton, 1586–1631: History and Politics in Early Modern England* (Oxford University Press, 1979), p. 196.

seem to go well beyond a 'cautious' reading of the texts. Sharpe's opus could never be described as reserved or conservative in its assertions – it is conjectural, animate and beguilingly credible.

In 1985 Rodgers, under the rubric 'the origins of historical study of the common law', has referred to the society as part of a larger article concerned with the issues of humanism and history in the common law. Once again, the significance of this more recent work is to posit the society in a context which is both legal and humanist and to some degree this excuses the author for reliance upon Fussner's monograph and Schoeck's 'The Elizabethan Society of Antiquaries and Men of Law' for the details of membership. Rodgers repeats some of the errors as to membership, although not the 1572 establishment mistake. The relevant passage warrants reciting in full:

The first signs of a *systematically* historical approach to English law are to be found in the activities of the Elizabethan Society of Antiquaries, founded in 1586. The Society's work was in part the culmination of the new interest in comparative studies but as many of its members were also common lawyers it also reflected the common lawyers' concern with the search for precedents and authority. The Society was composed of men of substance, who by education and social rank belonged to the upper privileged class. Their connections with the law were close; thirty-eight out of forty-three known members were also members of Inns . . . Until about 1590 group research was their usual practice; common research problems were assigned to individual members, who exchanged 'discourses' on set topics at meetings. During the 1590s the more voluble experts appear to have taken over meetings and ignored projects of common research. The emphasis throughout was on the investigation of the antiquity of the laws, customs and institutions of England.<sup>99</sup>

Rodgers' historico-legal emphasis echoes much of the negative, and essentially teleological, complaint of Fussner.

More recently, Mendyk's *'Speculum Britanniae': Regional Study, Antiquarianism, and Science in Britain to 1700* was published in 1989. Mendyk's fascinating accomplishment is, however, lacking in the emphasis that it accords the Society of Antiquaries. Apart from several peripheral comments, in a study which appears from its apparatus to be sourced largely

<sup>99</sup> Rodgers, *op. cit.*, pp. 146–7. Prior to this, Terrill described the society, which he notes (without reference) was established in 1586, as 'interested in historical studies': R. J. Terrill, 'Humanism and Rhetoric In Legal Education: The Contribution Of Sir John Dodderidge (1555–1628)', *The Journal of Legal History*, 2 (1981) 30 at 36. Unfortunately Terrill later committed the 1572 error: R. J. Terrill, 'William Lambarde: Elizabeth Humanist And Legal Historian', *JLH*, 6 (1985) 157–78 at 166.

from secondary material, Mendyk fails to make explicit the reasonably salvageable connections (via the society) between so many of the subjects of his work.<sup>100</sup> Two other more recent works, Piggott's *Ancient Britons and the Antiquarian Imagination* (published in 1989) and Helgerson's *Forms of Nationhood* (published in 1992), also give scant attention to the society and confuse the chronology, although Piggott at least notes (without reference) the legal emphasis.<sup>101</sup> By contrast, Parry's comments in *The Trophies of Time: English Antiquarians of the Seventeenth Century*, from as recently as 1995, and those of Ross in 1998, are much more factual and much less evaluative.<sup>102</sup>

### Analysis and conclusions

Our understanding of the Elizabethan Society of Antiquaries from the primary and other contemporary source materials is conditioned by the manner in which these materials have been preserved, lost, rediscovered: generally by how they have been transmitted to us, over the intervening centuries. During the extended period of 'discovery', from about 1618 until 1789, textual compilations (and prologues to the same) were all that was annexed to the corpus of raw data, the 'discourses', concerning the society. The society's lineage, up to this point, can therefore be characterised by a number of false starts and errors. In 1852, the last 'find' was made, but not until the twentieth century is it really possible to identify any real attempt to analyse, criticise and interpret. After the promising start made by Flugel however, the first phase of modern attention to the society can be seen to converge largely upon questions of the society's role as a successor to earlier groups of Anglo-Saxonists and as a precursor to later, more literature-centred, groups. This is certainly the upshot of the emphases of Steeves and Adams. The focus induced a notion of the society with somewhat ill-defined temporal parameters and membership. From Steeves and Adams, and enduring with (for example) Helgerson, the picture presented is of a blurred continuum from Parker to Selden covering

100 S. A. E. Mendyk, *'Speculum Britanniae': Regional Study, Antiquarianism, and Science in Britain to 1700* (University of Toronto Press, 1989), see especially p. 77.

101 S. Piggott, *Ancient Britons and the Antiquarian Imagination* (London, Thames and Hudson, 1989), p. 14 and R. Helgerson, *Forms of Nationhood: The Elizabethan Writing of England* (University of Chicago Press, 1992), pp. 15, 127–8, 300.

102 Parry, *Trophies of Time*, pp. 43–4 and R. J. Ross, 'The Memorial Culture of Early Modern English Lawyers: Memory as Keyword, Shelter, and Identity', *Yale Journal of Law and the Humanities*, 10 (1998) 229–326 at 240ff.

a period of almost a century. It is submitted that, if little else, this chapter has shown that this perspective overemphasises the importance of literary scholarship and fails to distinguish the legal and historical essences which underpin the society and marks its existence out as a significant moment in the emergence of legal history as a discipline with certain inimitable methodological attributes.

The Elizabethan Society of Antiquaries has clearly not lost its appeal in more recent times. Building upon the varied classes and qualities of evidence, early twentieth-century scholarship has (sometimes less than adequately) demonstrated its continuing interest. Van Norden rejected the theory of an early Elizabethan society of antiquaries, founded by Archbishop Parker. She was absolutely correct in pointing out that there is no primary evidence that such a society ever existed. For her, despite the demonstrable facts that Spelman wrote of his Society of Antiquaries years after it had discontinued, Spelman is nevertheless a trustworthy source and his chronology (in 'The Occasion') can be corroborated by the documentary records of the Society of Antiquaries.<sup>103</sup> The irony of Van Norden's legacy is that her thesis, a thesis conducted under the disciplinary certification of English literature, signals the effective termination of the literature-based interpretation of the society and the emergence of more consciously historical and legal studies.

The gradual recognition of Van Norden's findings has resulted in a marked shift in the representation of the society. In the latter part of the twentieth century, the dominant interpretation of the group has tended, with writers such as Fussner, Cheney, Levy, McKisack, Ferguson and others, to be historically focused. Behind this backdrop Sharpe posits a keen political scene. In a sense, the society has been claimed by historians for 'history', and even by the political historians for their own specialisation. Legal scholars, on the other hand, have been somewhat less than captivated by the society. The efforts of Schoeck and Rodgers aside, the group's disciplinary crosscurrent of legal scholarship remains to be fully explored.

103 Van Norden, 'Elizabethan College Of Antiquaries', pp. 113–14 and Van Norden, 'Chronology', pp. 159–60.